but with respect, and this was the other difficulty I met with in this case, both were mistaken in taking the point intra vel ultra vires before me, *via* section 30 of the Courts of Judicature Act. It would clearly have been the easier course if recourse had been made for a declaratory order under Article 4 of the Constitution, and after leave had been obtained, if the matter is placed before the Federal Court which under Article 128 has the exclusive original jurisdiction to declare invalid any law if such was the case.

In the High Court, all that a puisne judge is concerned with is to apply the law as duly enacted by Parliament.

In the present proceedings, it cannot be gainsaid that section 86(3) was so enacted. Consequently I must take the view that the proceedings being essentially a matter of giving effect to the statutory provisions of this section do not, in law, call into question the effect of any provision of the Constitution. There is therefore nothing left for me to do but to give judgment for the Government with costs.

Order accordingly.

Solicitors: *Lim Cheng Ean & Co.*

MUSA BIN SALLEH v. PUBLIC PROSECUTOR

[F.C. (Azmi L.P. Suffian and Ali F.JJ.), January 24, 1973]

[Kuala Lumpur — Federal Court Criminal Reference No. 4 of 1972]

Internal Security — Detention Order under s. 8(1)(a) of Internal Security Act, 1960 — Whether it is valid to make restriction order under s. 8(1)(b) of Act at expiry of detention order — Liability of the subject — Doubt to be construed in favour of accused.

The appellant had been originally detained under an order made on January 10, 1964 under section 8(1)(a) of the Internal Security Act, 1960. In 1964 section 8 of the Act was amended to give power to the Yang di-Pertuan Agong (later the Minister) to order that a detention order be extended for a further period or periods not exceeding two years. On January 10, 1966, an order was made extending the period of the appellant's detention for another two years. This second order was due to expire on January 10, 1968. A day before that, there was served on the appellant, a restriction order under section 8(1)(b) of the Internal Security Act 1960, whereby he was released but restricted to residence in the Pasir Puteh police district. The appellant failed to comply with this order and he was charged for failure to do so. At the trial before the Sessions Court he was acquitted but on appeal a retrial was ordered by Syed Othman J., who held that the restriction order was valid. The appellant was subsequently retried and found guilty. His appeal to the High Court was dismissed by Ibrahim J. who however referred the following questions to the Federal Court —

(a) Whether there has been a miscarriage of justice as respects the retrial (before the Second President) by reason that the conviction of the (appellant) was predetermined as soon as the (appellant) was called to answer the charge preferred against him and that the hearing afforded to the (appellant) was a mere formality;

(b) whether an order made in respect of the (appellant) by the Minister charged with responsibility for internal security under section 8(1)(b) of the Internal Security Act 1960 on certain facts is valid, having regard to the Minister's having previously already made and renewed in respect of the (appellant) an order under section 8(1)(a) of the said Act on the same facts.

Held: (1) there was no miscarriage of justice in this case, as there was a proper trial and there was nothing improper in the President's holding that he was bound by the ruling of the High Court that the order of the Minister was a valid order;

(2) *Per* Azmi L.P. and Suffian F.J. (Ali F.J. dissenting), the restriction order in this case was valid. If on one set of facts a detention order under paragraph (a) of section 8(1) of the Internal Security Act, 1960 is made by the executive it is open to them on the same facts to extend that order under sub-section (1A) and also on the same facts it is open to them after the expiration of that order to substitute for it a restriction order made under paragraph (b) of section 8(1) of the Act;

(3) (*Per* Azmi L.P. and Suffian F.J.), there was no evidence to show *mala fides* in this case and therefore the *restriction order could not be impugned* on this ground.

Cases referred to:-

(1) *Public Prosecutor* v. *Musa* [1970] 1 M.L.J. 101.

(2) *R.* v. *Captain Douglas Marr* [1946] M.L.J. 77 at p. 82.

The following cases were also cited in argument: *Pandit* [1964] 1 S.C.R. 926, 939; *Re Dillet* (1887) 12 App. Cas. 459, 467; *Mohiddeen Singh* (1932) L.R. 59 I.A. 233, 235; *Lanier* v. *R.* [1914] A.C. 221, 230; *Soo Kua* v. *Public Prosecutor* [1970] 1 M.L.J. 91; *Commissioner of Customs & Excise* v. *Cure & Deeley* [1962] 1 Q.B. 340, 366; *Liversidge* v. *Anderson* [1941] 2 All E.R. 613; *Ross Clunis* [1958] 2 All E.R. 23, 32(H); *H.P.C. Production Ltd.* [1962] 1 All E.R. 37, 41, C3; *Oliver* [1966] 2 All E.R. 459, 466.

FEDERAL COURT.

Raja Abdul Aziz bin Raja Addruse for the appellant.

Abdullah bin Ngah (Deputy Public Prosecutor) for the respondent.

Suffian F.J.: Musa bin Salleh, the appellant, was the subject of a detention order made in 1964 by the Minister of Internal Affairs under para. (a) of subsection (1) of section 8 of the Internal Security Act No. 18 of 1960.

In 1966, the Minister made an order directing that the appellant be further detained for two years. That order would have expired on 10th January, 1968.

On the previous day, i.e. on 9th January, 1968, there was served on the appellant a third order (Exhibit P1) made by the Minister under para. (b) of subsection (1) of section 8. The appellant was released from detention at 5.45 p.m. that day but on condition among others that he reside in Pasir Puteh Police District and not leave it without the prior written permission of the O.C.P.D.

There was evidence that the appellant refused to accept these conditions. To cut a long story short, the appellant was released from detention and went to live in Pasir Puteh Police District. Subsequently he was found at Kota Bahru where he had gone without the O.C.P.D.'s permission and he was accordingly charged with committing an offence under section 44 of the Internal Security Act.

At his trial the prosecution gave evidence, the appellant gave evidence, and after considering counsel's addresses the learned President, Encik Gulam Mustaffa, acquitted and discharged the appellant on the ground that the third order (Exhibit P1) was void.

On appeal by the Public Prosecutor a retrial was ordered by Syed Othman J., whose judgment has been reported — see *Public Prosecutor* v. *Musa*.[1] It was argued before him that once a detention order had been made by the Minister under para. (a) of subsection (1) of section 8 of the Act he was *functus officio* and he was precluded from making a restriction order under para. (b). The learned appellate judge, disagreeing with the learned President, rejected this argument. He held that the act of the Minister in issuing a detention order under para. (a) of subsection 1 of section 8 or a restriction order under para. (b) was an exercise of administrative function and was not an order of conviction for an offence or crime, and that therefore the Minister was not precluded from making the restriction order impugned and as there was no evidence of bad faith the order was valid and should be enforced.

The appellant was retried before another President, the late Syed Hamzah, who on 8th June, 1970, without calling on the defence acquitted and discharged the appellant.

On appeal by the Public Prosecutor, Ibrahim J. ordered that the defence be called.

The appellant's defence was duly called and on 28th April, 1971, after considering all the evidence and counsel's addresses Syed Hamzah found the appellant guilty, convicted him and fined him $200.

The appellant appealed against both conviction and sentence and on 5th April, 1972, Ibrahim J. dismissed his appeal and affirmed both conviction and sentence.

On application by the appellant, Ibrahim J. acting under section 66 of the Courts of Judicature Act has referred to this court the following two questions of law of public importance:

(i) whether there has been a miscarriage of justice as respects the retrial (before the second President) by reason that the conviction of the (appellant) was predetermined as soon as the (appellant) was called to answer the charge preferred against him and that the hearing afforded to the (appellant) was only a mere formality;

(ii) whether an order made in respect of the (appellant) by the Minister charged with responsibility for internal security under section 8(1)(b) of the Internal Security Act, 1960, on certain facts is valid, having regard to the Minister's having previously already made and renewed in respect of the (appellant) an order under section 8(1)(a) of the said Act, on the same facts.

As regards the first question, it is submitted on behalf of the appellant that the retrial resulted in a miscarriage of justice because Syed Othman J. having ruled that Exhibit P1 was a valid order the appellant's conviction followed automatically, that therefore the retrial was a trial only in form, but not one in substance. On the other hand on behalf of the Public Prosecutor it is submitted that the question posed is not one of law, but one of fact and that there is no need for this court to answer it, and alternatively if it is a question of law, then there had been no miscarriage of justice.

Assuming that this is a question of law, I am of the opinion that there has been no miscarriage of justice. At the retrial the prosecution adduced evidence, the appellant also adduced evidence, the learned President considered the addresses of counsel for both sides, and only after full consideration of the various matters in issue did he find the appellant guilty.

It is true that the argument that Exhibit P1 was invalid was repeated before him, and that he felt bound to apply the ruling by Syed Othman J. that it was a valid order, but in my opinion there was nothing improper about this: indeed the learned President would have been criticised had he chosen to ignore the ruling of a court that is binding on subordinate courts.

In my opinion therefore the answer to the first question is no.

As regards question No. 2, it is submitted on the appellant's behalf that the answer should be no. As I understand them, the arguments are as follows.

It is conceded that the Minister has power to make a detention order or a restriction order, but it is argued that such power to be validly exercised must be in accordance with the provisions of the Internal Security Act and that the impugned order (Exhibit P1) made in 1968 against the appellant has not been made in accordance with the Act and was therefore void.

The first order (Exhibit D4) made against the appellant was a detention order under para. (a) of subsection (1) of section 8 and bears the date 10th January, 1964. It said in the words of the Act that the Yang Di-Pertuan Agung being satisfied with respect to the appellant that, with a view to preventing him from acting in any manner prejudicial to the security of Malaysia, it was necessary so to do, the Minister therefore made an order directing that the appellant be detained for a period of two years. The validity of this order has not been impugned.

At the time when the order D4 was made there was no provision in the Act for extending a detention order beyond two years, but after the order had been made, in 1964 section 8 was amended by the addition of a new subsection (1A) expressly empowering the Yang Di-Pertuan Agung (later the Minister) to direct that the period of any order made under subsection (1) — which means not only a detention order but also a restriction order — be extended for a further period or periods not exceeding two years.

In exercise of the new power a second order was made against the appellant, that is Exhibit D6 dated 10th January, 1966, extending the period of his detention by another two years. The validity of this order is not impugned either.

We now come to the third order whose validity has been vigorously impugned all the way to this court.

The second order was due to expire on 10th January, 1968. A day before that, there was served on the appellant the third order. It is Exhibit P1. It did not extend the second order of detention, which the executive had power to do under the new subsection (1A). Nor did the executive use their power under

section 10 to keep the extended detention order in being and yet suspend it and release the appellant conditionally. Instead the executive allowed the extended detention order to lapse and at the same time substituted for it the impugned order; but this time they acted under another paragraph, namely paragraph (b) of subsection (1) of section 8. They made a restriction order, namely releasing the appellant altogether from detention provided that he lived in Pasir Puteh Police District and did not leave it without the prior written permission of the O.C.P.D.

It is said that the Minister could have made an order under section 10 suspending the extended detention order and releasing the appellant conditionally but not a restriction order under paragraph (b) of subsection (1) of section 8, because (so the argument runs) the power of the executive to act under subsection (1) of section 8 is in the alternative, so that they may only *either* make a detention order under paragraph (a) *or* a restriction order under paragraph (b).

It is said that once a detention order has been made it may be extended under subsection (1A) or suspended under section 10, but that on the same facts it cannot be followed, as was the case here, by a restriction order under paragraph (b), because having acted in respect of the detention order the Minister is *functus officio* and can no longer make a restriction order.

It is said that for a proper exercise of the power under paragraph (b) both Yang di-Pertuan Agung and the Minister should have applied their minds properly to the appellant's case and not treat it as a matter of routine. It is said that the appellant was originally detained because of his alleged activities during the Indonesian confrontation (this is clear from the statement supplied to him under section 11(2) of the Act), that since his arrest he had all along been in detention, that by the time of the third order Indonesian confrontation had ended, and that the fact that the impugned order was served on him on 9th January when in fact it was dated 10th January, showed that there had been no proper exercise of their discretion by the Yang di-Pertuan Agung and the Minister who had (it is submitted) treated the whole matter as routine.

It is said that for the above reasons the order Exhibit P1 must be regarded as void.

It is finally said that to treat it as valid would not be giving effect to the 1964 amendment introducing the new subsection (1A). It is said that before that amendment a detention order could have been made only for two years and no longer, that it could not have been extended beyond the two years — so that on its expiry it was not possible for the executive to make a restriction order to follow it. It is said that the executive could have acted under section 10 if they had wanted to validly release the appellant conditionally, and that therefore if this impugned order is regarded as valid, then section 10 would be superfluous.

In considering this matter I bear in mind that if there is any ambiguity in the law the court should lean in favour of the liberty of the subject which should in no way be diminished except by the clearest of language used in the law. Bearing the above principle in mind, I have come to the conclusion that I cannot agree with the submissions made on behalf of the appellant, that in my view the impugned order was valid, and that the answer to question (b) is yes. I am of the opinion that if on one set of facts a detention order under paragraph (a) is made by the executive it is open to them on the same facts to extend that order under subsection (1A) and that also on the same facts it is open to them after the expiry of that order to substitute for it a restriction order made under para. (b). Be it noted that a detention order is not a conviction for an offence that has been proved against the detainee. If it were, then clearly he could not be detained again on the same facts. On the contrary a detention order is an administrative order; it is not to punish the detainee. The detention order is *preventive* detention, with a view in the words of section 8 "to preventing (the detainee) from acting in any manner prejudicial to the security of Malaysia or any part thereof". If the Yang di-Pertuan Agung is on one set of facts satisfied that with a view to preventing a person from acting in that way it is necessary to order his preventive detention in 1964, in my view it is permissible for him after a fresh consideration of the same facts to extend his detention two years later and that it is equally permissible for him after a further consideration of the same facts to make a restriction order against him in 1968. In my view the fact that the executive could just as well suspend the detention order under section 10 does not prejudice their power to act under para. (b) of section 8.

As to *mala fides* which it is suggested existed in this case, the rule is that it is for the appellant to prove it, and not for the respondent to disprove it. The impugned order recited that the Yang di-Pertuan Agung was satisfied with respect to the appellant that, with a view to preventing him from acting in a manner prejudicial to the security of Malaysia, etc., it was necessary to make the restriction order. It then continued: now therefore in exercise of the powers conferred on the Minister by section 8(1)(b) of the Internal Security Act, 1960, the Minister thereby ordered that the appellant be subjected to certain conditions, and the Minister signed the order. There was no evidence called to show *mala fides*. The fact that the order was served on 9th January, 1968, though bearing the date 10th January, 1968, does not in my view show *male fides*. When it was served on the 9th it already bore the Minister's signature and the fact that it was dated a day later did not invalidate the order.

In my view therefore the appellant was rightly convicted and his appeal rightly dismissed by Ibrahim J. To sum up, the answer to the first question is no, and to the second yes.

Azmi L.P. in a brief judgment agreed with the conclusions and reasons above.

Ali F.J. (read by Azmi L.P.): This is a reference under section 66 of the Courts of Judicature Act, 1964. The questions for our determination are as follows:

1. Whether there has been a miscarriage of justice as respects the said retrial by reason that the conviction of the appellant was predetermined as soon as the appellant was called to answer the charge preferred against him and

that the hearing afforded to the appellant was only a mere formality.

2. Whether an order made in respect of the appellant by the Minister charged with responsibility for internal security under section 8(1)(b) of the Internal Security Act, 1960, on certain facts is valid, having regard to the Minister's having previously already made and renewed in respect of the Appellant an Order under section 8(1)(a) of the said Act, on the same facts.

Question No. (1) necessarily involves the consideration of the ordinary criminal law and procedure while No. (2) the relevant provision or provisions of the Internal Security Act, 1960.

The circumstances in which these question arose were briefly as follows: The applicant, Musa bin Salleh, was charged in the Sessions Court in Kota Bharu, Kelantan and the charge against him was —

"That you on 3.2.69 at about 3.00 p.m. at Kota Bharu, in the District of Kota Bharu, in the State of Kelantan, being a person subject to the order of the Menteri Hal Ehwal Dalam Negeri, Malaysia under section 8(1)(b) of the Internal Security Act, 1960, contravened the said order, to wit, by leaving the area of Pasir Puteh Police District without the prior permission in writing of the Officer-in-Charge Police District Pasir Puteh, and that you have thereby committed an offence punishable under section 44 of the Internal Security Act, 1960."

He claimed trial. He raised a legal defence. He contended that the order which was said to have been contravened by him was invalid and that being so his act of leaving the area without police permission could not be an offence under the Act. The learned President of the Sessions Court upheld this defence and acquitted him. On appeal by the Public Prosecutor the High Court reversed the order of acquittal and ordered a retrial. The learned appeal judge Syed Othman J. took the contrary view by holding the impugned order valid. See his judgment in *Public Prosecutor* v. *Musa*.[1]

The retrial was before another President, the late Syed Hamzah who, after hearing arguments, acquitted the applicant without calling for his defence. The Public Prosecutor again appealed to the High Court. Ibrahim J. allowed the appeal and directed the defence to be called. Thereupon, the late President called the defence and convicted the applicant who was sentenced to a fine of $200. The applicant's appeal against conviction was dismissed by Ibrahim J. who has now referred the two questions above for our determination.

I will dispose of the first question in a few words. Substantially the applicant complains that his retrial as ordered by Syed Othman J. was a miscarriage of justice. He said that his conviction was predetermined even before the retrial which was merely a formality of re-recording undisputed evidence. By this was meant that the binding effect of the judgment of Syed Othman J. on the Sessions Court precluded him from again raising a legal defence to the charge. He relied on the judgment of Worley, J. in *R.* v. *Captain Douglas Marr*[2] who said, inter alia:

"I refrain from expressing any views as to the merits of the suggestions put forward by Mr. Walters, for fear that such a finding might be deemed to influence the view of the court which rehears the case."

As may be noticed, Syed Othman, J. did not refrain from expressing his views on the merits of the applicant's defence. I fail to see how he could have done otherwise. The validity of the order was the crucial point in the appeal. Perhaps the learned judge should have recorded a conviction instead of ordering a retrial which he was entitled to do under section 315(a) of the Criminal Procedure Code. Frankly speaking, I cannot see any merit or substance in the complaint. I would answer the first question in the negative.

I now turn to the second question which arose in the following circumstances. In 1964 the applicant was detained pursuant to an order expressed to have been made under paragraph (a) of subsection (1) of section 8 of the Internal Security Act, 1960. Section 8(1) provides as follows:

"8.(1) If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof, it is necessary so to do, the Minister shall make an order —

(a) directing that such person be detained for any period not exceeding two years; or

(b) for all or any of the following purposes, that is to say —

(i) for imposing upon that person such restrictions as may be specified in the order in respect of his activities and the places of his residence and employment;

(ii) for prohibiting him from being out of doors between such hours as may be specified in the order, except under the authority of a written permit granted by such authority or person as may be so specified;

(iii) for requiring him to notify his movements in such manner at such times and to such authority or person as may be specified in the order;

(iv) for prohibiting him from addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to any organisation or association, or from taking part in any political activities;

(v) for prohibiting him from travelling beyond the limits of the Federation or any part thereof specified in the order except in accordance with permission given to him by such authority or person as may be specified in such order:

and any order made under paragraph (b) of this sub-section shall be for such period, not exceeding two years, as may be specified therein, and may by such order be required to be supported by a bond."

As may be noticed the words of limitation "not exceeding two years" appear in both paragraphs (a) and (b). Not only that, there is also the word "or" which given its ordinary grammatical meaning seems to suggest that as against a particular person the detaining authority will have to decide whether to act under paragraph (a) or (b). In this case the detaining authority decided to act under (a). The detention order made was to expire at the end of two years but before its expiry, section 8 was amended by the addition of a new subsection (1A). (L.N. 335/64). By this amendment the detaining authority is given the power to extend the period of detention or restriction for a further period or periods of two years at a time. Purporting to act under the amended provision, an order was made extending the period of detention for another two years. In terms of this provision at the end of the extended period the detaining authority could have made another detention order. But it did not. It decided to act under paragraph (b). According to the evidence, it decided to act even before the applicant was released from detention. At about 2.00 p.m. on 9th January, 1968 a copy of the order was brought to the detention camp to be served on the applicant. He protested but was nevertheless ser-

ved with it. The purpose of the new order, generally speaking, was to restrict the applicant's freedom of movement after his release. He was not to leave a particular district in Kelantan without the permission of the police. But about a year after his release he left the district without police permission and was arrested. He was charged as above stated.

The arguments at the hearing before us were mainly directed to the question whether in the circumstances of this case the detaining authority was acting within its powers in making the restriction order under paragraph (b) of section 8(1). On behalf of the applicant it was argued that in terms of section 8(1) the detaining authority has power to act under either paragraph (a) or (b) but not under both. The word "or" was relied upon as having that effect. Syed Othman J. in *Public Prosecutor* v. *Musa, supra,* agreed that the power is alternative. In any case he said it would be pointless for the detaining authority to act under (a) and (b) at the same time. He added, however, that there is nothing to prevent the detaining authority from acting under paragraph (b) on the expiry of the order under (a) on a fresh satisfaction. He did not say in so many words what he meant by "fresh satisfaction". He thought there might be a change of circumstances or situation relating to the applicant but did not elaborate. At any rate he was of the view that the applicant was challenging the satisfaction of the Yang di-Pertuan Agong. With respect I think in challenging the validity of the impugned order the applicant was doing no more than what he was entitled to do in a criminal cases. His reason was that while under detention he could not have done anything to warrant the issue of another order under section 8(1). He could not possibly have acted in any manner prejudicial to the security of Malaysia to render it again necessary to make a fresh order. On the evidence in this case it is difficult to conceive the existence of any new or fresh ground or fresh allegations of facts to support a fresh order. In this connection, however, Ibrahim J. had this to say —

"... I need only add that I cannot see why if another detention order for a further period of two years could have lawfully been made a restriction order could not instead be lawfully made on the expiry of D6 upon the Yang Di-Pertuan Agong being satisfied afresh that it was necessary to make such an order, even though it might have been based on the same ground and allegations of facts for it cannot be said that the Yang Di-Pertuan Agong was precluded from also taking into consideration the circumstances then prevailing, *i.e.* the improved security position of the country when he became so satisfied."

In other words, if there is power under the new subsection (1A) to extend the period of detention there is no reason why the detaining authority cannot act under paragraph (a) and again after an interval of time under paragraph (b). The truth is that the addition of the new subsection (1A) does not and cannot affect the construction of the original subsection (1). The original subsection expressly limits the power to detain or impose restriction to a period of not exceeding two years. The new subsection only gives power to extend such period and nothing more. To read into the original subsection something which is not there is against the ordinary canon of construction. Quite apart from what I have just stated I am of the view that the provisions of the Internal Security Act, 1960 so far as they are inconsistent with the provisions of the Constitution must be strictly construed. The Act is a special legislation made under Article 149 of the Constitution which declares the inconsistent provisions valid. By strict construction I mean that if in construing those provisions there is any doubt as to the power of the detaining authority, as in this case, that doubt must be resolved in favour of the subject. In this case I do not think I need rely on this principle of construction because reading section 8(1) as I do I have no doubt that in the circumstances of this case there is no power to act under paragraphs (a) *and* (b) against the applicant. The words of limitation "not exceeding two years" and the word "or", as already stated, make it clear that the detaining authority cannot act on the same grounds and on same allegations of fact twice against the same person. I would agree with Syed Othman J. if the fresh order referred to in his judgment was based on fresh grounds and fresh allegations of fact. But there was no evidence of that. Accordingly, I would answer the second question in the negative.

If my view is correct, then it is only fair and just that the applicant's conviction should be quashed and that fine, if paid, should be refunded to him. There is power to do that under subsection (5) of section 66 of the Courts of Judicature Act, 1964.

Order accordingly.

Solicitors: *Rithauddeen & Aziz.*

LETCHUMANAN v. KOK SENG FATT

[F.C. (Azmi L.P., Suffian and Ali F.JJ.) January 24, 1973]

[Kuala Lumpur — Federal Court Civil Appeal No. 65 of 1972]

Moneylenders — Firm registered as moneylender — Whether partner can sue in name of firm — Objection not taken on pleadings or in court below — Fresh loan renewing earlier loans — Failure to sign as lender in first loan — Contract unenforceable — Subsequent renewal enforceable — Moneylenders Ordinance, 1951, s. 16.

Practice and Procedure — Appeal — Question of mixed law and fact — Point not raised in court below — Appellate court's refusal to hear argument.

This was an appeal against the decision of the trial judge who gave judgment in favour of the respondents in a claim on a moneylending debt. On appeal it was argued:—

(1) the respondent was not the lender and was not entitled to bring the action as the respondent and others were partners in a firm which was licensed as moneylenders;

(2) the learned trial judge was wrong in holding that the moneylenders complied with the provisions of the Moneylenders Ordinance. The loan in this case was a renewal of earlier loans, and it appeared that the respondent had not signed the first loan as a lender and had collected excessive interest.

Held: (1) the objections as to the status of the respondent were not raised on the pleadings or in the court below and therefore this ground of appeal cannot be considered and must be dismissed;

(2) the present claim was not based on the documents relating to the first loan and even if that loan was unenforceable, this did not render any of the subsequent renewals of the loan also unenforceable.